

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

CASSANDRA LUSTER et al.

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CIVIL ACTION NO.

Plaintiffs,

v.

3:16-CV-0396-B

CITY OF DALLAS, ET AL.

Defendants.

APPENDIX FOR BRIEF FOR PLAINTIFFS' MOTION FOR LEAVE TO AMEND
PLAINTIFFS' EXPERT DESIGNATION OF SCOTT BELSHAW

Respectfully submitted,

TED B. LYON & ASSOCIATES, P.C.

By: /s/ Charles A. Bennett
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ATTORNEY FOR PLAINTIFFS

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing document was duly served pursuant to the Texas Rules of Civil Procedure via Electronic Mail/eServe on the following counsel of record on this 12th day of December 2017.

/s/ Charles A. Bennett
CHARLES A. BENNETT

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<u>Item</u>	<u>Pages</u>
Videotaped Deposition of Brandon Davis, dated 18 October 2017	1-5

			Page 3
1	VIDEOTAPED DEPOSITION OF BRANDON DAVIS	1	S T I P U L A T I O N
2	October 18, 2017 11:40 a.m. - 1:22 p.m.	2	The videotaped deposition of BRANDON DAVIS,
3	IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS DALLAS DIVISION	3	called as a witness at the instance of the Plaintiffs,
4		4	taken pursuant to all rules applicable to the Federal
5		5	Rules of Civil Procedure by Notice on the 18th day of
6		6	October, 2017, at Regus, 200 Prosperity Drive,
7	CASSANDRA LUSTER, et al, Plaintiffs, vs. CITY OF DALLAS, et al, Defendants.	7	Knoxville, Tennessee, before David L. Kelly, Licensed
8)) NO. 9) 3:16-cv-00396-G 10) 11)	8	Court Reporter, pursuant to stipulation of counsel.
12		9	It being agreed that David L. Kelly, Licensed
13	APPEARANCES:	10	Court Reporter, may report the videotaped deposition in
14	FOR THE PLAINTIFFS:	11	machine shorthand, afterwards reducing the same to
15	CHARLES A. BENNETT, ESQ. Attorney at Law Ted B. Lyons & Associates Town East Tower, Suite 525 18601 LBJ Freeway Dallas, Texas 75150	12	typewriting.
16		13	All objections except as to the form of the
17	FOR THE DEFENDANTS:	14	questions are reserved to on or before the hearing.
18	MICHAEL B. JONES, ESQ. Attorney at Law Canterbury, Gooch, Surratt, Shapiro, Stein & Gaswirth 5005 LBJ Freeway, Suite 1000 Dallas, Texas 75244	15	It being further agreed that all formalities
19		16	as to notice, caption, certificate, transmission,
20		17	etcetera, including the reading of the completed
21		18	videotaped deposition by the witness and the signature
22		19	of the witness, are expressly waived.
23		20	
24	ALSO PRESENT: Matt Poplin, Videographer	21	
25		22	
		23	
		24	
		25	
		Page 2	Page 4
1	I N D E X		
2	Examinations	Page	1 MR. BENNETT: The parties have agreed to
3			2 objection form only and to waive reading, right?
4	BRANDON DAVIS		3 MR. JONES: No. We want to read and
5	EXAMINATION BY MR. BENNETT	4	4 sign.
6			5 MR. BENNET: No, I mean --
7			6 MR. JONES: Reading of the -- yeah,
8			7 sorry. Yes, we've agreed to that.
9	E X H I B I T S		8 MR. BENNETT: Okay.
10	No.	Description	9 MR. JONES: My bad.
11		Page	10 MR. BENNETT: I was unclear.
12	Exhibit 1 - Drawing	90	11 BRANDON DAVIS,
13			12 having first been duly sworn, was examined and deposed
14			13 as follows:
15			14 EXAMINATION BY MR. BENNETT:
16			15 Q. Can you state your full name for the
17			16 record, please.
18			17 A. Brandon Davis.
19			18 Q. My name is Charles Bennett. I represent
20			19 the family of Desmond Luster, who was -- and Damon
21			20 Luster. Desmond was the guy who was shot and killed
22			21 February 9, 2015 at the Flying J in Dallas, and Damon
23			22 was his brother who was arrested and there at the time.
24			23 Do you understand who I am and who I represent?
25			24 A. Yes, sir.
			25 Q. Have you ever given a deposition like

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1	turn it out, they clip the pump. You know, so it's either going to do -- it's probably going to do damage both ways: Their RV, our pump. So we do a property incident report. We get their information. We put everything down. It comes into our home office. They handle it from there.	1	A. Fair. Q. Okay. So let's say somebody is trespassing or you don't really want them on there or just two customers get in a fight and somebody -- somebody gets injured, is that something we fill out a customer incident report for?
2	Q. All right. And by "pumps", you mean like one of those gas pumps, right? A. Yeah, gas pump.	2	A. We would. Q. Okay. And that's because somebody was injured, correct?

3 Q. So you've have got -- I guess in that
situation there's two types of property damage. One is
to the customer's property, right?

A. Correct.

Q. And the second one would be to Pilot's
property, right?

A. Correct.

Q. Okay. And let's say -- I guess, Pilot
would become aware of that property damage in a couple
of different ways, and one is the customer comes in and
says, "Hey, I just hit the pump." Is that fair?

A. That's fair.

Q. And then the second one would be maybe
some other customer comes by and says, "Hey, it looks
like somebody hit the pump." Is that fair?

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1 **A. That's fair.**

Q. And then other way would be an employee
comes by and notices it; is that right?

A. Correct.

Q. Can you think of any other ways that you
guys may become aware of the property damage?

**A. No. Those are the -- those are probably
the main three: We see it, somebody sees it, or they
tell us.**

Q. Okay. All right. And then let's talk
about customer incident reports. When -- when is it
that a GM like you knows that I've got a situation
where I need to pull up this customer incident report
and fill it out?

**A. Those would be your slip and falls, your
trips. Basically any time somebody is injured on the
property we fill out a report.**

Q. Now, we mentioned earlier a little bit
about how -- I think this Dallas one I've heard some
stories about having some people that come on that
aren't really customers, and you don't really want them
on there. They're kind of trespassers, right?

A. Correct.

Q. And that happens from time to time in any
business, fair?

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1 Q. All right. So I've give got slip and
fall, trip and fall, assault, and arrest. Can you
think of anything else that we would fill out a
customer incident report for?

5 Maybe we can do it this way: Is it any
time a customer gets injured? Is that fair?

7 **A. It doesn't have to be just for injury,
though, I don't think.**

9 Q. Okay. Explain that.

10 **A. I know that's one reason to fill it out,
but you may fill it out for -- I'm trying to remember
the report, exactly how it looks whenever I used to do
it, but the main reason you did it is normally for
injury, yes.**

15 Q. Okay. One, you might have a situation
where a customer comes in and claims they were injured,
and you don't really know that at that point, right?

18 **A. Right.**

19 Q. And so would you fill out a report then
even if you're not really sure if it happened or not;
is that fair?

22 **A. Yeah. You still should fill out the
report, yes, sir.**

24 Q. Okay. So for injuries and claimed
injuries; is that fair?

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1 Q. Now, we talked about when and kind of why
 2 you do these incident reports, and we talked about kind
 3 of the minimum requirements for like if somebody's
 4 injured or they claim they're injured.

5 Do you agree with me that the reasons
 6 we're doing these incident reports is so that, you
 7 know, the GM knows what's going on in the store, and
 8 the regional manager knows what's going on in the
 9 store, and Pilot itself knows so there's something in
 10 writing about the incident? Is that fair?

11 **A. That's fair.**

12 Q. And if there's a problem that we can fix,
 13 whether it comes from the GM or the regional manager or
 14 Pilot above that, right?

15 **A. Correct.**

16 Q. And so if there's something happening
 17 that there should be an incident report and an incident
 18 report isn't done, that that's a -- that's a failure of
 19 whoever was supposed to fill out that report. Do you
 20 agree with that?

21 **A. I agree with that.**

22 MR. JONES: Objection to form.

23 BY MR. BENNETT:

24 Q. Because if there's -- if that report is
 25 not done and it should have been done, and, you know,

1 Pilots depends on and relies on their GMs to do, right?

2 **A. Correct.**

3 Q. And if the GM isn't doing something,
 4 isn't filling out an incident report when they should,
 5 then that's a failure on the GM's part to do something
 6 that's important to their job, right?

7 **A. Yes, sir.**

8 Q. Do you agree that the -- I think you kind
 9 of mentioned this earlier, is that the -- keeping those
 10 panhandlers in check in the back part of the lot and
 11 making sure that things are safe for these truck
 12 drivers, that's obviously a part of the off-duty
 13 security guard's job, right?

14 **A. Correct.**

15 Q. And that's -- that is a part of Pilot's
 16 success as a company. Do you agree with that?

17 MR. JONES: Objection. Form.

18 THE DEPONENT: No, I don't think it has
 19 anything to do with Pilot's success. I think it's
 20 more of a store-by-store basis on -- like, that
 21 store has off-duty police officers --

22 BY MR. BENNETT:

23 Q. Right.

24 **A. -- for that reason, to keep the
 25 panhandlers off the back lot. I don't think that has**

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1 Pilot doesn't have any knowledge of it, they can't fix
 2 it, right?

3 **A. Correct.**

4 Q. And that can cause a safety problem or,
 5 you know, something that could be fixed and not be
 6 fixed and can cause it to be less safe, right?

7 MR. JONES: Objection. Form.

8 THE DEPONENT: Let's say if it's just
 9 people aren't in the know and should be in the
 10 know.

11 BY MR. BENNETT:

12 Q. And they can't -- they can't say, "Hey,
 13 there's a problem down in that -- in that Dallas Flying
 14 J," or whatever it is. "We need to go and fix that,"
 15 right? Because they don't know, right?

16 **A. Yeah, depending on what the -- depending
 17 on what the issue is.**

18 MR. JONES: Objection form.

19 BY MR. BENNETT:

20 Q. Well, if it's an issue that arises above
 21 like we talked about earlier where an incident report
 22 should be done and it's not done, you know, that's why
 23 you do the reports, right?

24 **A. Yeah, to make those people aware.**

25 Q. Okay. And -- and that's something that

1 **anything to do with Pilot's success as a company.**

2 Q. Okay. I may have made it too broad
 3 there. Let's talk about just the Flying J in Dallas.
 4 It's part of that Flying J's success. Would you agree
 5 with that?

6 MR. JONES: Objection. Form.

7 THE DEPONENT: Again, I don't think it
 8 has anything to do with their success. I think it
 9 has to do more with making sure that the building
 10 and customers and the people that work there are
 11 safe.

12 BY MR. BENNETT:

13 Q. Well, if -- if the word gets out that
 14 it's not safe to go to that Flying J in Dallas and
 15 truck drivers and customers stop showing up, then you'd
 16 agree that that could affect the success of that Flying
 17 J in Dallas; is that fair?

18 **A. That's fair.**

19 Q. Okay. Do you agree that the job that
 20 that officer is doing for Flying J is different than
 21 their job as a police officer, if you know?

22 MR. JONES: Objection. Form.

23 THE DEPONENT: Do I think the job is
 24 different?

25 BY MR. BENNETT:

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1 Q. Did anybody ever complain that Officer 2 Tolerton was coming across the street and roughing 3 people up over there? 4 A. No. 5 Q. Did you ever see Tolerton rough anybody 6 up on the Flying J property? 7 MR. JONES: Objection. Form. 8 THE DEPONENT: Did I ever see him? No. 9 BY MR. BENNETT: 10 Q. Did you ever hear about it? 11 A. There was one incident where another one 12 of my managers -- I think Tolerton had tackled somebody 13 in the front on the parking lot. I didn't see it. 14 So -- 15 Q. Okay. Do you know if Tolerton was hurt 16 in that incident? 17 A. His hip was hurt, yes, sir. 18 Q. Okay. Do you know about when this 19 incident was? 20 A. No. I don't remember the date. 21 Q. Do you know if the person that either 22 tackled him or was tackled, do you know if that person 23 was injured? 24 A. He was not. 25 Q. Okay. If there was -- we talked earlier	1 A. I wouldn't know. 2 MR. JONES: Objection. Form. 3 BY MR. BENNETT: 4 Q. Okay. All right. So what did you hear 5 about this incident? What happened? 6 A. I don't even remember -- I don't even 7 remember what the incident was. I just remember -- I 8 can remember Tolerton's hip being hurt, him getting 9 into other car. 10 I know Agence Smith was the other manager 11 that was involved, and I can remember him telling me 12 that he went out there and helped hold the guy down so 13 that Tolerton could get out from under him. 14 Q. Okay. Agent Smith? 15 A. Agence. A-g-e-n-c-e, Agence. 16 Q. Okay. And that's his first name? 17 A. Yes, sir. 18 MR. JONES: Deceased. 19 THE DEPONENT: He passed away. 20 BY MR. BENNETT: 21 Q. What happened? Do you know? 22 A. I got a call a few months ago from a guy 23 that worked at the store and asked me if I was going to 24 be able to make it down for the funeral, and I told 25 him, you know, I can't. It's too far, and I've got a		
1 about when to do those incident reports. If there was 2 a situation where there was an altercation between an 3 off-duty police officer and somebody on Flying J's 4 property and either the officer or the other person was 5 hurt, is that an instance we would need to do a report? 6 A. Yes, sir. 7 Q. Do you know if a report was done in that 8 incident? 9 A. There was not. 10 Q. Okay. Do you know why? 11 A. Just didn't do one. 12 Q. Who was the GM on duty at that time? 13 A. I was. 14 Q. At the time of the tackling? 15 A. I believe so, yes, sir. 16 Q. Oh, I thought you heard about the 17 tackling from somebody else? 18 A. I didn't see it. I was at the store. 19 Q. I'm sorry. Okay. I misunderstood. So 20 you were on duty at the time of this -- this tackling 21 incident? 22 A. Yes, sir. 23 Q. And if I told you that we think it 24 happened in November of 2014, does that -- do you have 25 any reason to argue about that?	1 bunch of stuff going on. But I think they said he had 2 a heart attack and passed away. 3 Q. Was he older or how old was he? 4 A. No. He was a big old dude, healthy, from 5 what I thought. 6 Q. Like -- 7 A. It's crazy, just a shot -- just one of 8 those freak things that -- 9 Q. And this was this year earlier? 10 A. Yes, sir, since I've been in Chattanooga, 11 and I got to Chattanooga last year. So -- 12 Q. Okay. So Mr. Smith came to you 13 and -- oh, Mr. Smith held the guy down that he tackled 14 or was tackled by Tolerton, and let's clear that up. 15 Do you know which it was that -- 16 A. I don't know. 17 Q. Okay. So Agence -- Agence Smith, 18 Mr. Smith, held the guy down while Tolerton got up; is 19 that your understanding? 20 A. That's my understanding. 21 Q. Do you know -- did Mr. Smith explain what 22 the incident was about? 23 A. Huh-uh, not that I can remember. I'm 24 sure he did, but that's -- I just don't remember. 25 Q. Did you ever talk to Tolerton about it?	Page 70	Page 72

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1	A. No.	1 guy is taken away and another guy is arrested that an
2	Q. Do you know who the person was, the other	2 incident report should probably be done, right?
3	person that was involved?	3 A. Should have been done.
4	A. I don't know.	4 Q. Okay. And was that going to be -- should
5	Q. Had you ever seen him before?	5 that have been your responsibility or Mr. Smith's?
6	A. No.	6 A. It should have been mine.
7	Q. Was he one of the panhandlers?	7 Q. Okay. Do you know why you didn't do it
8	A. Yeah, I don't know.	8 that day?
9	Q. Okay. Did Tolerton get taken away by	9 A. No.
10	ambulance?	10 Q. Was it just a --
11	A. No.	11 A. Just a failure on my part.
12	Q. You said another car came and picked him	12 Q. Fair enough. Did you -- were you ever
13	up. Do you know --	13 reprimanded for that by the regional manager or anybody
14	A. I think it was another police car.	14 else?
15	Q. So he -- he left by police car?	15 A. No.
16	A. Correct.	16 Q. Were you ever talked to about, "Hey, this
17	Q. Did you know -- did Mr. Smith know that	17 is something we need -- we need to do the incident
18	Tolerton was hurt?	18 report in the future?"
19	A. I don't -- I don't know. I think after	19 A. Have I had those conversations in my
20	he got up he radioed to a partner, and that's who come	career? Yes, but that one in particular, no.
21	and got him.	21 Q. How many times have -- have you had the
22	Q. Oh, called --	22 conversations with other people about, "Hey, you know,
23	A. Yeah, Tolerton radioed to somebody else	23 Mr. Davis, you need to do an incident report in the
24	to come get him, to the best of my recollection.	24 future on something like this?"
25	Q. So you think Tolerton may have gotten on	25 A. Normally it's not them having the
	Page 74	Page 76
1	his police radio. It wouldn't have been a	1 conversation. It's me calling and asking if I need to
2	walkie-talkie?	2 do one.
3	A. It wouldn't have been ours.	3 Q. About how many times do you think you
4	Q. So you think Tolerton got on the police	4 called and asked somebody for advice on whether you
5	radio and called in some help, and somebody picked him	5 should do a report on an incident?
6	up, right?	6 A. Probably two or three times that I have
7	A. Correct.	7 called that I wasn't sure or it was a new situation for
8	Q. And do you know what Mr. Smith did with	8 me.
9	the guy that he held down?	9 Q. And are you calling your regional manager
10	A. I don't remember. I'm sure he went to	10 at this point or somebody else?
11	jail.	11 A. Yes, I called my regional.
12	Q. Okay. So you think that guy was probably	12 Q. All right. And were these -- any of
13	arrested?	13 these two or three times while you're working at the
14	A. Correct.	14 Dallas Flying J?
15	Q. Did any of your employees see that	15 A. No.
16	incident, that you recall?	16 Q. When were they, if you can remember?
17	A. No.	17 A. Let me think. It probably would have
18	Q. Do you know -- besides that tackling	18 been early in my career, like, at one of my early
19	incident, do you know of any other incidents that	19 stores, Sulfur Springs maybe. I probably would have
20	Tolerton was involved in where he either was in an	20 called, you know, Brad or somebody and asked, but by
21	altercation with somebody or he had somebody arrested	21 the time I got -- I didn't have to call in Dallas at
22	while he was working for the Flying J?	22 all.
23	A. No.	23 Q. And you're a regional manager now. So is
24	Q. And I think we agreed earlier that this	24 this something that you -- you get calls like this from
25	is the type of incident, this tackling thing, where one	25 your GMs on occasion?